

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TIMOTHY G. LANG,

Plaintiff,

v.

CITY OF SPOKANE VALLEY,
LYLE JOHNSTON, LYDIG
CONSTRUCTION, INC. and
HUGH V. MULLANE,

Defendants.

NO. CV-08-383-RHW

**ORDER DENYING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

Before the Court are the Lydig Construction Defendants' Motion for Summary Judgment (Ct. Rec. 29) and the City of Spokane Valley and Lyle Johnston's Motion for Summary Judgment (Ct. Rec. 31). A telephonic hearing was held on Lydig Construction Defendants' Motion for Summary Judgment on September 7, 2010. Plaintiff was represented by Richard Wall. Lydig Construction Defendants were represented by Thomas Merrick. Daniel Catt, counsel for Spokane Valley and Johnston attended the hearing but did not participate. Spokane Valley's and Johnston's Motion for Summary Judgment was heard without oral argument.

STANDARD OF REVIEW

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

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JUDGMENT ~ 1**

1 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). There is no
2 genuine issue for trial unless there is sufficient evidence favoring the non-moving
3 party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby,*
4 *Inc.*, 477 U.S. 242, 250 (1986). The party moving for summary judgment bears the
5 initial burden of identifying those portions of the pleadings, discovery, and
6 affidavits that demonstrate the absence of a genuine issue of fact for trial. *Celotex*
7 *Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial
8 burden, the non-moving party must go beyond the pleadings and “set forth specific
9 facts showing that there is a genuine issue for trial.” *Id.* at 325; *Anderson*, 477
10 U.S. at 248.

11 In addition to showing that there are no questions of material fact, the
12 moving party must also show that it is entitled to judgment as a matter of law.
13 *Smith v. Univ. of Washington Law School*, 233 F.3d 1188, 1193 (9th Cir. 2000).
14 The moving party is entitled to judgment as a matter of law when the non-moving
15 party fails to make a sufficient showing on an essential element of a claim on
16 which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323.

17 When considering a motion for summary judgment, a court may neither
18 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
19 is to be believed, and all justifiable inferences are to be drawn in his favor.”
20 *Anderson*, 477 U.S. at 255.

21 ANALYSIS

22 At the heart of this case is whether Plaintiff committed a crime when he
23 made misrepresentations on a time log sheet that was submitted to the Union.
24 Plaintiff maintains that he did so under the direction of Defendant Mullane, who
25 also signed the time log sheets. Defendant Mullane insists that he did not so
26 instruct Plaintiff and that he did not sign the time sheets. Consequently, it is
27 undisputed that there are genuine issues of material fact regarding whether Mullane
28 signed the time log sheets or whether he instructed Plaintiff to make the

1 misrepresentations. As such, to the extent that resolution of the claim depends on
2 the jury's determination as to whether to believe Plaintiff or Mullane, summary
3 judgment is not appropriate.

4 It is the Defendant's position that the jury does not have to make this
5 determination because Plaintiff admitted to making the representations on the time
6 logs. The Court disagrees. Rather, when viewing the facts from the light most
7 favorable to Plaintiff, there are genuine issues of material fact concerning the
8 claims and defenses.

9 As a matter of law, the Court finds that the statute of limitations began to
10 accrue when Plaintiff learned of the statements made to the police officers. *See*
11 *Blackledge v. City of Tacoma*, 2003 WL 22391016 (Wash. App. 2003) (applying
12 the discovery rule in determining whether a defamation claim accrued).

13 QUALIFIED IMMUNITY

14 Defendant Johnston argues that he is entitled to qualified immunity. "The
15 doctrine of qualified immunity protects government officials from liability for civil
16 damages insofar as their conduct does not violate clearly established statutory or
17 constitutional rights of which a reasonable person would have known." *Pearson v.*
18 *Callahan*, __ U.S. __, 129 S.Ct. 808, 815 (2009). Put another way, a police officer
19 is not entitled to qualified immunity if: (1) the facts show that the officer's conduct
20 violated a plaintiff's constitutional rights; and (2) those rights were clearly
21 established at the time of the alleged violation. *Id.* at 816.

22 As set forth above, there are genuine issue of material fact regarding whether
23 Defendant Johnston violated Plaintiff's constitutional rights. Summary judgment
24 would be appropriate if "under the plaintiff's version of the facts, and in light of
25 the clearly established law, a reasonable officer could not have believed his
26 conduct was lawful," *Schwenk v. Hartford*, 204 F.3d 1187, 1196 (9th Cir. 2000).
27 Here, it was clearly established that there must be probable cause to charge a
28 person with a crime. The Court does not find that it was reasonable to rely on

1 Mullane's version of the events in question to conclude there was probable cause
2 to charge Plaintiff with theft and forgery, especially in light of the fact that it was
3 inconclusive that the signatures were not genuine.

4 **DISMISSAL OF CLAIMS**

5 In his response, Plaintiff dismissed the following claims: (1) Section 1983
6 claims against the Lydig Construction Defendants; (2) Malicious prosecution claim
7 against the Spokane Valley Defendants; and (3) *Monell* claim against the City of
8 Spokane Valley.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant Lydig Construction & Hugh Mullane's Motion for Summary
11 Judgment (Ct. Rec. 29) is **DENIED**.

12 2. Defendant City of Spokane Valley and Lyle Johnston's Motion for
13 Summary Judgment (Ct. Rec. 31) is **DENIED**.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and forward copies to counsel.

16 **DATED** this 8th day of September, 2010.

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18
19 s/Robert H. Whaley
20 **ROBERT H. WHALEY**
21 United States District Judge

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